APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 1666

TENNESSEE PUBLIC SERVICE COMMISSION, CITY OF CHICAGO, THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY TENNESSEE, STATE OF LOUISIANA, ALABAMA PUBLIC SERVICE COMMISSION, PUBLIC UTILITIES COMMISSION OF OHIO, RAILWAY LABOR EXECUTIVES' ASSOCIATION AND UNITED TRANSPORT SERVICE EMPLOYEES (AFL-CIO), *Plaintiffs*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND LOUISVILLE AND NASHVILLE RAILROAD COMPANY, *Defendants*.

Memorandum and Order on Motion to Dismiss

Before Knoch, Senior Circuit Judge, and Robson and Perry, District Judges.

Robson, District Judge:

This is a suit to review certain findings and conclusions of the Interstate Commerce Commission. The defendant railroad has moved to dismiss. This court is of the opinion that the motion should be granted.

On April 3, 1968, the Louisville & Nashville Railroad Company ("L & N") gave notice under 49 U.S.C. § 13a(1) that, effective May 7, 1968, its trains numbered 6 and 7 between Cincinnati, Ohio, and New Orleans, Louisiana, would be discontinued. The Interstate Commerce Commission ("Commission"), on April 24, 1968, entered an order requiring the L & N to continue operating trains 6 and 7

pending an investigation by the Commission. After hearings, the Commission terminated its investigation, and on September 3, 1968 (served September 6, 1968) filed a report. This action was filed shortly thereafter, and, on September 9, 1968, a temporary restraining order was entered. After a further hearing, the restraining order was continued until a three-judge court could be convened and a decision rendered. A joint hearing (with *City of Chicago* v. *United States,* 68 C 956) was held on November 4, 1968. The Commission denied a petition for reconsideration on October 31, 1968, thereby making its action administratively final.

The defendant L & N has moved to dismiss on the ground that this court lacks jurisdiction to review the Commission's decision to terminate the investigation of the proposed discontinuance. This issue was discussed at length in the opinion filed today in *City of Chicago* v. *United States,* 68 C 956. A copy of that opinion is attached and the argument on the jurisdictional issue is hereby incorporated by reference. In short, this court is of the opinion that Congress intended to deny judicial review in cases such as the one before this court.

It is therefore ordered that the defendant Louisville and Nashville Railroad Company's motion to dismiss be and it is hereby granted, and the cause is hereby dismissed.

It is further ordered that the temporary restraining order heretofore entered be and it is hereby dissolved.

WIN G. KNOCH
Circuit Judge

J. SAM PERRY
District Judge

EDWIN W. ROBSON
District Judge

January 8, 1969

APPENDIX B

FINANCE DOCKET No. 25047

LOUISVILLE AND NASHVILLE RAILROAD COMPANY DISCONTINUANCE OF TRAINS NOS. 6 AND 7 BETWEEN NEW ORLEANS, LA., AND CINCINNATI, OHIO

Decided September 3, 1968

Upon investigation, found that the continuance of operation by the Louisville and Nashville Railroad Company of its passenger trains Nos. 6 and 7 between New Orleans, La., and Cincinnati, Ohio, is not required by public convenience and necessity and that the continued operation thereof will burden interstate commerce. Investigation discontinued.

Clifford T. Coomes, Charles B. Arendall, Jr., Thomas S. Lawson, Jr., James E. Simpson, David M. Keeble, and *Robert T. McConaughy* for the Louisville and Nashville Railroad Company.

Weldon A. Cousins, Langdon D. Bell, Nat K. Knight, Bennett E. Smith, Robert A. Jones, Eugene W. Ward, James Kenneth Atkins, and *Chester L. Rigsby* for regulatory agencies of the States of Louisiana, Mississippi, Alabama, Tennessee, Kentucky, and Ohio, protestants.

Louis A. Schwartz, Lawrence F. Daspit, Horace Perry, William A. Thompson, Robert E. Kendrick, Rom McGrath, Raymond F. Simon, and *Bernard Rane* for protestants.

S. F. Walker, F. T. Edwards, Olin B. Brooks, Leslie Stifflemire, P. A. Young, Clifford H. Rex, Joe Hester, Henry E. Risner, John B. Mullins, Jr., J. W. Faust, J. G. Griffin, Alex E. Little, Harry T. Smith, W. R. Selby, A. L. Shepherd, and *Robert C. Tyler* for railway labor organizations, protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, BUSH, AND DEASON

TUGGLE, *Commissioner:*

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, the Louisville and Nashville Railroad Company (L&N), a common carrier by railroad subject to the provisions of part I of the act, filed a notice and statement on April 3, 1968, in which it proposed to discontinue, effective May 7, 1968, the operation of its passenger trains Nos. 6 and 7 operating between New Orleans, La., and Cincinnati, Ohio, a distance of 927 miles. Copies of the notice were served and posted in the manner prescribed by section 13a(1) of the act and related rules and regulations.

Upon receipt of numerous petitions and letters of protest, an investigation of the proposed discontinuance of service was instituted by our order dated April 24, 1968, which required continued operation of the trains for a period not exceeding 4 months beyond the date when the discontinuance would have become effective. Because of the statutory limitaion upon the time available for investigation and decision, the order provided for the omission of a report and recommended order by the hearing examiner and for certification of the record to us for initial decision. Hearings were held at New Orleans, La., Mobile, Montgomery, and Birmingham, Ala., Nashville, Tenn., Louisville, Ky., and Cincinnati, Ohio. Briefs have been filed.

The trains.—Train No. 6 operates northbound daily from New Orleans to Cincinnati departing New Orleans 8:15 a.m. and arriving Cincinnati 8:10 a.m. the next morning. Train No. 7 operates southbound daily from Cincinnati departing Cincinnati 7:40 p.m. and arriving New Orleans 8:10 p.m. the next evening. The schedule of the trains, the points served, and their populations are set forth in appendix A.

Train consists and crews.—The regular consist of northbound train No. 6 is one double-unit diesel locomotive, one coach, one sleeping car, and one baggage-express car, New Orleans to Cincinnati, daily; one dining car, New Orleans to Nashville, daily; one dormitory car, Montgomery to Nashville, daily; one coach, Montgomery to Louisville, 3 days a week; from one to four express cars. Nashville to Cincinnati, 4 days a week; one storage-mail car, Louisville to Cincinnati, 4 days a week; and one mail-express car, Louisville to Cincinnati, 3 days a week.

The regular consist of southbound train No. 7 is one double-unit diesel locomotive, one coach, and one sleeping car, Cincinnati to New Orleans, daily; one or more express cars, Cincinnati to Louisville, at irregular intervals; one storage-mail car, Cincinnati to Nashville, daily; one baggage-mail car, Cincinnati to Montgomery, daily; one mail-express car, Louisville to Nashville, 6 days a week; one express car, Louisville to Nashville, 3 days a week; one coach, Louisville to Montgomery, 3 days a week; one dining car, Nashville to New Orleans, daily; one dormitory car, Nashville to Montgomery, daily; one storage-mail car, one baggage-mail car, and one coach, Montgomery to New Orleans, daily.

The equipment is described as modern and well maintained and the passenger cars are the newest owned by the carrier. The locomotive equipment would be retired and the car equipment transferred to other trains as replacements of older equipment.

Train No. 6 employes 6 engineers, 6 firemen, 5 conductors, 5 flagmen, 2 baggagemen, 2 coach attendants, 3 dining car employees, and a pullman porter for a total of 30 crew members. Train No. 7 employs the same number of employees in each of the same categories except 1 less conductor for a total of 29 crew members.

Other persons required for the operation of the trains include station and terminal employees who sell tickets,

operators and dispatchers charged with actual operation of the trains, yardcrews who form the trains and work on train equipment, car department employees who inspect, maintain, and clean the car equipment, and mechanial employees who maintain the required motor power.

One position in each pullman car would be eliminated; the personnel involved are not employees of the carrier.

Following the proposed discontinuance, the on-train crews would be employed in other services; they all maintain freight seniority and could be used in freight related positions. Those with insufficient seniority might be assigned to extra boards.

Use of passenger service.—In the respective periods of 1966, 1967, and 1968 (the last, annualized on the basis of data for February 1 to April 30, 1968), the passenger miles of the trains were 52,848,271, 48,668,491, and 22,035,336. In the respective periods of November and December 1967, January, February, March, and April 1968, the average number of passengers per train-mile on train No. 6 was 47, 82.6, 54.4, 30.4, 36.4, and 35.7. During the same periods the average number of passengers per train-mile on train No. 7 was 43.3, 85.4, 50.7, 30.9, 31, and 34.3.

Appendix B reflects the daily average "on" and "off" counts at all stations between New Orleans and Cincinnati for a 6-month period November 1, 1967 to April 30, 1968. The symbols (OC) and (L&N byd) refer to passengers transferring from other railroads and passengers transferring to other L&N trains. On train No. 6, the only intermediate points having an average of 8 or more passengers per day "on" or "off" were Pasagoula (10), Mobile (15), Montgomery (24), Birmingham (25), Decatur (8), Nashville (32), and Louisville (12). On train No. 7 the only intermediate points having a daily average of 7 or more were Louisville (20), Bowling Green (15), Nashville (30), Decatur (7), Birmingham (22), Montgomery (20), and Mobile (17).

Alternate transportation.—In addition to the trains proposed for discontinuance, L&N operates daily trains Nos. 8 and 9 (the Pan American) between New Orleans and Cincinnati, serving the same intermediate points, except Rigolets, La., a conditional stop on train No. 7. Train No. 8 departs New Orleans at 8:45 p.m., as compared with train No. 6's morning departure, and arrives Cincinnati at 9:30 p.m., the following evening. Train No. 9 departs Cincinnati 9:15 a.m., as compared with train No. 7's evening departure, and arrives New Orleans 7:55 a.m., the following morning. L&N also operates trains Nos. 15 and 16 (the South Wind) every other day, between Louisville and Montgomery, serving the same intermediate points as its other four trains. In connection with the Penn Central Railroad and the Seaboard Coast Line Railroad, the South Wind provides through service between Chicago, Ill., and certain Florida points, including Miami and St. Petersburg. Through service would remain between New Orleans and Atlanta, Ga., by change of schedule by the Atlanta and West Point Railroad (A&WP) between Atlanta and Montgomery, the latter an interchange point with the L&N, whereby A&WP would connect with L&N train No. 9 rather than with L&N No. 7 as at present.

All L&N stations here involved, except Rigolets, have direct daily bus service between New Orleans and Cincinnati. There are as many as 21 bus schedules between the various points, depending upon the populations.

Daily scheduled airline service is available between Cincinnati, Louisville, Bowling Green, Nashville, Birmingham, Montgomery, Mobile, Pascagoula, Gulfport, Biloxi, and New Orleans.

Official highway maps of the States involved herein indicate numerous combinations of Federal highways including several segments of the interstate system between New Orleans and Cincinnati and the principal intermediate points served by the trains.

Financial data.—The carrier's balance sheet as of March 31, 1968, shows assets of $1,003 million, including current assets of $97.4 million, special funds $4.3 million, investments $34.8 million, total properties less reserves for depreciation and amortization $857.3 million, and other assets and deferred charges $9.1 million. Liabilities were: Current $53.6 million; long-term debt, due within 1 year, $27.7 million; long-term debt, due after 1 year, $407.8 million; reserves $5.8 million; other liabilities and deferred credits $16.6 million; capital stock $123.9 million; capital surplus $22.1 million; and retained income unappropriated $345.4 million. L&N's income statements for the years 1966, 1967, and the first 3 months of 1968, show, respectively, railway operating revenues of $292.2 million, $285.3 million, and $73.5 million; net railway operating income $38.2 million, $31.4 million, and $6.6 million; net income after fixed charges and other deductions $28.5 million, $19.9 million, and $4.9 million.

The carrier's exhibits and testimony, as revised, depicting revenues, expenses, and out-of-pocket losses pertaining to the operation of the trains indicate net losses in 1966, 1967, and the first 4 months of 1968, of $9,318, $505,361, and $309,461, respectively. The estimated net loss for 1968, based on the month of April 1968, is $909,667. Net annual savings to the carrier, systemwise, upon discontinuance of the trains, are estimated to be $1,610,473. Appendix C reflects the actual revenues and expenses for the year 1967 and the first 4 months of 1968 in the first and second columns. The third column reflects the revenues and expenses for the year 1968 based upon the operating results for the month of April 1968. Column four reflects an estimate of the revenues that would be retained on other L&N trains and the added expenses of handling the traffic on other trains. Column five is an estimate of revenues that would be lost and the expenses to be saved by handling the traffic on other trains should the discontinuance of trains Nos. 6 and 7 be approved.

The revenues and costs, as set forth in appendix C, were computed by the carrier in accordance with generally accepted methods previously approved by the Commission as appropriate in train discontinuance cases and are not under dispute.

The operating expenses for 1966, 1967, the first 4 months of 1968, and the projection for the year 1968 were shown on an out-of-pocket basis. Wages of traincrews and enginecrews are the actual wages paid the crews, increased for the appropriate payroll taxes, meals, lodging, vacation, holiday, and health and welfare allowances. Locomotive fuel, water, lubricants and other supplies, locomotive depreciation, and personal injury and livestock damage, are on system averages with appropriate allocations to these trains according to the actual units involved. Dining expenses is the actual cost incurred and pullman deficits are the amounts billed by the Pullman Company.

Locomotive repairs and enginehouse expenses are based on system average unit costs applied to the number of units involved in these trains, decreased by 21 percent for overhead costs which include such items as labor costs and maintenance of facilities which would remain constant even though trains Nos. 6 and 7 were discontinued.

Car repairs and train supplies and expenses are similarly determined and subjected to a 21-percent decrease for overhead costs and elimination of the costs for deadhead cars on trains Nos. 6 and 7. Car depreciation and cost for rental of passenger cars were adjusted to eliminate deadhead equipment.

The joint terminal expenses shown to be avoidable as a result of the discontinuance were computed in the manner approved by the Commission in *Chicago, R. I. & P. R. Co. Discontinuance of Trains,* 328 I.C.C. 278, 286. They include only the amount by which the carrier's share of the total expenses would be diminished by virtue of its lesser use of

the terminals. The costs shown as savable do not include amounts attributable to deadhead equipment carried on trains Nos. 6 and 7 in and out of the terminals.

Evidence in opposition.—Thirty-nine public witnesses appeared at hearings in opposition to the discontinuance of the trains of whom 6 appeared at New Orleans, 9 at Montgomery, 16 at Birmingham, 6 at Nashville, and 2 at Louisville. No public witnesses appeared at Mobile or Cincinnati.

Among those expressing opposition were representatives of United States Congressmen, a representative of the Governor of Alabama, a State legislator, members and representatives of the Public Service Commission of Louisiana, Mississippi, Alabama, and Tennessee, a member of the Kentucky Railroad Commission, mayors, city and county officials, a representative of a college, a mortician, carrier employees, a pullman porter, and members of the public. Of the total witnesses, 14 were past and prospective patrons of the trains.

Public officials opposed the discontinuance of the trains on the stated ground that the economy and the industrial growth in the area is dependent upon continued service by all means of transportation, and particularly rail passenger service. They were also concerned with the general disapperance of passenger trains through discontinuances and the likelihood that all rail passenger service may become extinct. They, regular passengers, and others contend that alternate transportation services are not adequate.

Generally the passenger witnesses testified that at times there were equipment failures, that on time performances were poor, that overcrowding, particularly on weekends and holidays, had occurred, and that the employees were not as courteous as those of other common carriers. Criticism was also directed to a lack of advertising by the car-

rier. On the other hand, several of the patrons praised the carrier as being first class as compared with other railroads. All of such witnesses were desirous of having the trains for their future use and most preferred rail transportation to bus travel and some indicated their fear of air travel.

Discussion and Conclusions

Among factors to be considered in proceedings under section 13a(1) of the act to ascertain whether operation of the passenger trains is required for the public convenience and necessity and will not unduly burden interstate commerce are the population served, the effect on the communities on their route, the extent of the use made by the public of the service sought to be discontinued, alternate transportation service available in the area, the costs incurred and financial losses sustained by the carrier in providing the service under consideration, and the carrier's financial condition. No one of such factors by itself is conclusive or controlling. The burden imposed upon the carrier and upon interstate commerce must be weighed against the need for the service. It is possible that the need for the service under certain circumstances may be so great as to warrant its continuation even at a loss to the carrier. This could arise where the loss of the service would inflict serious injury on the communities, while continuance of the service would impose a relatively slight financial burden on the carrier. The facts in this proceeding do not disclose such an overriding need for the continuance of the involved trains.

L&N began incurring substantial losses on these trains in 1967 ($505,361) even with mail revenues of over $1 million, express revenues over $300,000, and additional revenues from passengers interlined at Evansville, Ind., with Chicago & Eastern Illinois Railroad Co. (C&EI) trains Nos. 93 and 54 and connecting with L&N's trains Nos. 6 and 7 at

Nashville, via intermediate L&N trains Nos. 5 and 10. The C&EI trains were discontinued February 1, 1968, *Chicago & E.I.R. Co. Discontinuance—Chicago & Evansville,* 331 I.C.C. 447.

If the carrier were required to operate the subject trains for another year, it would suffer out-of-pocket losses in excess of $900,000 (computed on the basis of 1968 costs and revenues). Nothing in the record indicates that the deficit could be abated in future years. In addition to the loss of connecting passengers, railway postoffice cars have been eliminated, reducing mail revenues, and on April 1, 1968, railway express (from one to four cars daily) was diverted to truck over the highway.

The full burden of the trains can be better visualized by considering the total economies attainable upon their discontinuance. As shown in appendix C, by retaining a portion of their traffic through diversion to other L&N trains (estimated to produce revenues of $939,500) and incurring thereon costs estimated at $238,700, the carrier could avoid more than $2.3 million of its present costs and thus effect economies in the range of $1.6 million per year. This brings us face to face with the question of whether the public's need for these trains is so great that the nation's private enterprise carrier system must be required to provide for it at an annual out-of-pocket deficit exceeding $900,000 while foregoing the opportunity to effect economies of more than $1.6 million per year.

Before discussing this issue, we turn to a preliminary matter, raised in the briefs filed by the city of Chicago, Ill., and the metropolitan government of Nashville and Davidson County, Tenn., dealing with the decision in *Chicago & E.I.R. Co. Discontinuance—Chicago & Evansville, supra.* These litigants and others have instituted an action in the United States District Court for the Northern District of Illinois, entitled City of Chicago, et al. v United

States, et al., to set aside the said decision of the Commission. The parties here ask that we request L&N to continue the operation of trains Nos. 6 and 7 voluntarily, pending full judicial review of the *C&EI* decision, and, in the event of a refusal by L&N, that we seek a temporary restraining order prohibiting the discontinuance of the trains pending full judicial review.

It is clear that pursuant to the provisions of section 13a(1) of the act, once having entered upon an investigation, we must make the statutory findings needed either to sustain a discontinuance of the investigation, or to support an order requiring continuance of the service within the time limit prescribed by section 13a(1). The evidence before us clearly establishes that the operation of these trains is not required by public convenience and necessity, that the continued operation thereof will unduly burden interstate commerce, and that the investigation should be discontinued; and we so find. Under these circumstances we have no lawful basis for ordering a continuance to await (perhaps longer than a year) developments which, in the end, might or might not change the picture.

The people who have been using the trains for travel have done so largely on an occasional or standby basis. Their primary means of conveyance are the automobile and other nonrail modes. The testimony of the governmental leaders, business representatives, and others is clear proof of that. Many gave opinions about a need for rail passenger service in the interest of community and commercial growth, but few hard, realistic facts were advanced by them in support. On the other hand, the carrier's director of industrial development testified that of 1,726 new industries located on L&N lines in the past 8 years, 843 were at points that had no rail passenger service.

He specified the factors that industry in general considers in selecting a new site—mainly, availability of such things as labor, lower wage rates, lower taxes, utilities,

freight transportation (rail, truck, air and water) economical freight rates, access to raw materials, and cultural facilities—but availability of rail passenger service was not among them. He knew of not a single instance where rail passenger service was even mentioned. This testimony stands uncontroverted by the factual evidence of record.

Even for the individual traveler who calls upon the L&N for his occasional trip, the demand for the service of these trains is minimal. As shown in appendix B, an average of but 2.4 persons per day use train No. 6 for through service from New Orleans to Cincinnati, and only 2 per day use train No. 7 for the through run in the opposite direction. The same is true for the usage to and from the intermediate points: for example, from Mobile, a city of a quarter million, to Birmingham (population 325,000) there are only 4 passengers per day, and to Nashville (population 250,000), only 4 per day.

Local traffic between points on the 490-mile segment between Louisville and Montgomery constitutes a third of the total number of passengers—about 50 of the approximately 150 daily average who board and deboard at the various points along the 927-mile route. This area, which includes Nashville, will continue to have daily service by trains Nos. 8 and 9, the Pan American, and ever-other-day service by trains Nos. 15 and 16, the South Wind. The Pan American will also be available for through passengers and for service at all points on the Hummingbird schedule. Also available are the six daily through schedules each way by bus serving practically all the points on the line, numerous bus runs on segments of the line and airline services heretofore described. From this record we conclude that these alternate services are reasonably adequate to meet the public need for common carrier transportation services. In the face of this conclusion, notwithstanding that some inconvenience to travelers may be encountered at times, we cannot overlook nor disregard the enormous

and ever increasing losses to the carrier. This is plainly a case where there are too many trains for the diminishing needs of the public on this line. With former sources of traffic and revenue unalaterably foreclosed while costs continue their upward spiral, the carrier cannot be expected to continue running a train upward of 1,000 miles each day for service along the way to about 150 persons—many of whom travel only short distances [1]—while subsidizing their travel at the rate of $14.50 out-of-pocket per passenger.

Shippers of express will have adequate service remaining by over-the-highway truck transportation, and by L&N trains Nos. 8 and 9. Buses operating over the highway also render express service. The Post Office Department will continue the mails, including parcel post, to all points by use of airplanes, trucks, and the L&N trains Nos. 8 and 9.

Considering, among other things, the sparing use now made of these long-line trains—not only by travelers, but also by the Post Office Department and shippers of express—the abundance of alternate transportation by rail and other modes and the magnitude of the financial burden which the carrier would have to bear if the trains were continued, this is precisely the kind of circumstance for which Congress designed the relief of section 13a(1). Efforts have been made to have the law amended, including recommentations to Congress by this Commission, to provide a statutory plan for solutions to the passenger train problem under modified criteria. However meritorious Congress may find those efforts to be, they cannot be embraced as elements for decision of the matter now before us. As an administrative agency we are bound by the law as it stands and must be governed by the intendment of Congress in its enactment.

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[1] For example, of the 1,763 boarding at Pascagoula during the 6 months covered by appendix B, 1,497 deboarded at Mobile, 40 miles away.

Employee representatives have requested that appropriate conditions be imposed for protection of employees who may be affected by the discontinuance. It is well established that we have no authority to impose employee protective conditions in a section 13a discontinuance case. The adverse effect of a discontinuance upon employees is a factor to be considered in evaluating public convenience and necessity. Having weighed such factor, we conclude that any possible adverse effect upon the carrier's employees, when considered with all other facts discussed herein, does not justify the findings we would have to make before we could lawfully order continued operation of the involved trains.

Contentions of the parties as to fact or law not specifically discussed herein have been considered and found to be without material significance or not justified.

We find that the operation by the Louisville and Nashville Railroad Company of passenger trains Nos. 6 and 7 between New Orleans, La., and Cincinnati, Ohio, is not required by the public convenience and necessity and that continued operation thereof would unduly burden interstate commerce.

An appropriate order will be entered discontinuing the investigation herein.

COMMISSIONER BUSH concurs in the result.

APPENDIX A

No. 6 Daily (Read down)	Miles		No. 7 Daily (Read up)	Population 1958
8:15 a.m.	0	Lv. New Orleans, La---Ar.	8:10 p.m.	665,000
8:20 a.m.	----	Lv. Carrollton Avenue---Lv.	7:50 p.m.	-------
-------	36	Lv. Rigolets---Lv.	-------	-------
-------	53	Lv. Waveland, Miss---Lv.	-------	1,106
9:29 a.m.	57	Lv. Bay St. Louis---Lv.	6:25 p.m.	5,073
9:51 a.m.	72	Lv. Gulfport---Lv.	6:00 p.m.	33,000
-------	79	Lv. Edgewater Park---Lv.	5:48 p.m.	750
10:07 a.m.	85	Lv. Biloxi---Lv.	5:40 p.m.	47,000
10:31 a.m.	105	Lv. Pascagoula---Lv.	5:10 p.m.	20,800
11:25 a.m.	----	Ar. Mobile, Ala---Lv.	4:15 p.m.	220,000
11:40 a.m.	145	Lv Mobile, Ala---Ar.	3:50 p.m.	-------
-------	169	Bay Minette---Lv.	3:05 p.m.	5,197
12:55 p.m.	----	Ar. Flomaton---Lv.	2:20 p.m.	1,454
1:00 p.m.	205	Lv. Flomaton---Ar.	2:20 p.m.	-------
-------	218	Brewton---Lv.	1:58 p.m.	6,809
-------	243	Evergreen---Lv.	1:28 p.m.	3,703
2:29 p.m.	279	Greenville---Lv.	12:53 p.m.	6,594
3:40 p.m.	----	Ar. Montgomery---Lv.	12:05 p.m.	146,000
4:10 p.m.	323	Lv. Montgomery---Ar.	10:30 a.m.	-------
6:10 p.m.	----	Ar. Birmingham---Lv.	8:15 a.m.	325,000
6:25 p.m.	421	Lv. Birmingham---Ar.	7:45 a.m.	-------
-------	473	Lv. Cullman, Ala---Lv.	-------	11,900
8:15 p.m.	506	Lv. Decatur---Lv.	5:59 a.m.	33,800
10:50 p.m.	----	Ar. Nashville, Tenn---Lv.	3:30 a.m.	250,887
11:35 p.m.	626	Lv. Nashville, Tenn---Ar.	2:25 a.m.	-------
1:00 a.m.	----	Ar. Bowling Green, Ky---Lv.	12:45 a.m.	32,800
1:20 a.m.	699	Lv. Bowling Green Ky---Ar.	12:20 a.m.	-------
2:30 a.m.	771	Lv. Elizabethtown---Lv.	11:06 p.m.	10,900
4:35 a.m.	----	Ar. Louisville---Lv.	11:10 p.m.	392,000
5:00 a.m.	813	Lv. Louisville---Ar.	10:45 p.m.	-------
7:40 a.m	922	Lv. Latonia (Covington)---Lv.	7:58 p.m.	57,000
8:10 a.m.	927	Ar. Cincinnati, Ohio---Lv.	7:40 p.m.	495,500

APPENDIX B

Louisville and Nashville Railroad Company, passengers handled on L&N Train No. 6 for 6 months period, November 1, 1967 to April 30, 1968

From	On	D/A*	Off	D/A*	To Bay St. Louis	Gulfport	Biloxi	Pascagoula	Mobile	Flomaton	Flomaton (L&N byd)	Greenville	Montgomery	Montgomery (OC)	Birmingham	Birmingham (OC)	Cullman	Decatur	Decatur(OC)	Nashville	Nashville (L&N byd)	Bowling Green	Elizabethtown	Louisville	Louisville (OC)	Latonia	Cincinnati	Cincinnati (OC)
New Orleans, La	1,404	18.7	------	-----	345	282	395	171	909	56	12	33	254	--	143	---	6	37	--	236	60	10	4	69	---	---	243	138
New Orleans (OC)	889	4.9	------	-----	4	52	89	16	173	25	58	4	95	35	57	6	1	24	5	38	12	3	3	131	2	---	19	37
Carrollton Avenue	-----	-----	-----	-----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----
Bay St. Louis, Miss	275	1.5	349	1.9	---	188	5	4	20	---	---	---	19	--	11	2	---	1	--	1	12	---	--	----	--	1	4	7
Gulfport, Miss	758	4.2	522	2.9	---	---	229	122	51	1	--	7	36	--	41	31	3	21	--	19	92	1	--	11	--	---	33	60
Biloxi, Miss	1,081	5.9	718	3.9	---	---	---	459	114	2	--	2	85	--	52	46	---	13	--	20	124	---	--	21	--	3	37	105
Pascagoula, Miss	1,763	9.7	772	4.2	---	---	---	---	1,497	10	--	12	31	--	44	25	---	12	--	10	75	---	--	6	1	---	17	23
Mobile, Ala	2,778	15.2	2,764	15.1	---	---	---	---	----	68	7	63	473	1	402	262	30	150	4	71	710	2	2	66	1	---	125	343
Flomaton, Ala	1,033	5.7	162	0.9	---	---	---	---	----	---	--	25	86	--	144	77	14	39	--	59	290	3	8	33	3	---	97	155
Flomaton (L&N byd)	919	5.0	77	0.4	---	---	---	---	----	---	--	3	41	2	119	112	7	14	3	104	239	1	1	26	--	---	49	198
Greenville, Ala	142	2.4	149	0.8	---	---	---	---	----	---	--	---	57	1	125	18	---	16	--	11	64	---	--	12	--	---	43	95
Montgomery, Ala	4,329	23.8	1,175	6.5	---	---	---	---	----	---	---	---	----	--	1,086	280	48	194	3	254	1,303	7	4	143	--	---	366	641
Montgomery (OC)	90	0.5	39	0.2	---	---	---	---	----	---	---	---	----	---	12	---	---	1	--	5	36	---	--	5	1	---	16	14
Birmingham, Ala	4,319	24.8	2,236	12.3	---	---	---	---	----	---	---	---	----	---	----	---	148	166	--	591	1,682	22	22	256	4	1	587	1,040
Birmingham, (OC)	168	0.9	859	4.7	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	27	26	---	--	6	--	---	21	88
Cullman, Ala	309	1.7	257	1.4	---	---	---	---	----	---	---	---	----	---	----	---	---	5	--	14	219	---	--	15	--	2	23	31
Decatur, Ala	1,594	8.8	693	3.8	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	102	968	1	11	161	--	2	134	215
Decatur (OC)	-----	-----	15	0.1	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----
Nashville, Tenn	863	4.7	1,562	8.6	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	37	7	206	7	4	223	379
Nashville, Tenn (L&N byd)	656	3.6	5,912	32.5	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	19	7	328	---	---	148	154
Bowling Green, Ky	266	1.5	106	0.6	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	3	177	2	1	42	41
Bowling Green, (L&N byd)	1,143	6.3	-----	-----	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	8	494	1	9	293	338
Elizabethtown, Ky	5	0.1	80	0.4	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	2	---	---	----	3
Louisville, Ky	674	3.7	2,168	11.9	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	----	--	8	293	373
Louisville (OC)	-----	-----	22	0.1	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	----	---	---	----	----
Latonia, Ky	-----	-----	31	0.2	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	----	---	---	----	----
Cincinnati, Ohio	-----	-----	2,811	15.4	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	----	---	---	----	----
Cincinnati (OC)	-----	-----	4,479	24.6	---	---	---	---	----	---	---	---	----	---	----	---	---	---	---	----	----	---	---	----	---	---	----	----
Total	27,958	153.6	27,958	153.6	349	522	718	772	2,764	162	77	149	1,175	39	2,236	859	257	693	15	1,562	5,912	106	80	2,168	22	31	2,811	4,479

*D/A daily average.

Louisville and Nashville Railroad Company, passengers handled on Train No. 7 for 6 months period, November 1, 1967 through April 30, 1968

From	On	D/A*	Off	D/A*	To Louisville	Louisville,(OC)	Elizabethtown	Bowling Green	Bowling Green(L&N byd)	Nashville	Nashville (L&N byd)	Decatur	Decatur(OC)	Cullman	Birmingham	Birmingham (OC)
Cincinnati, Ohio	2,901	15.9	-----	-----	383	--	3	120	366	300	129	106	-	28	498	89
Cincinnati (OC)	3,960	21.8	-----	-----	482	2	3	45	310	285	235	175	2	36	848	81
Latonia, Ky.	36	0.2	-----	-----	14	12	1	3	1	---	---	2	-	2	1	---
Louisville, Ky.	3,531	19.4	879	4.8	---	--	16	1,334	516	195	413	136	1	4	333	68
Louisville (OC)	101	0.6	14	0.1	---	--	--	1	2	10	7	---	-	---	4	---
Elizabethtown, Ky.	73	0.4	23	0.1	---	--	--	26	8	7	12	2	-	---	6	4
Bowling Green, Ky.	117	0.6	1,529	8.4	---	--	--	-----	---	19	40	5	-	1	7	7
Bowling Green (L&N byd)	-----	----	1,203	6.6	---	--	--	-----	---	--	---	---	-	---	---	---
Nashville, Tenn.	464	2.5	816	4.5	---	--	--	-----	---	--	---	26	-	2	142	14
Nashville (L&N byd)	329	1.8	1,179	6.5	---	--	--	-----	---	--	---	727	1	138	1,661	144
Decatur, Ala.	329	1.8	1,179	6.5	---	--	--	-----	---	--	---	---	1	3	51	10
Decatur (OC)	13	0.1	4	0.1	---	--	--	-----	---	--	---	---	-	---	2	4
Cullman, Ala.	49	0.3	214	1.2	---	--	--	-----	---	--	---	---	-	---	7	---
Birmingham, Ala.	1,559	8.6	3,560	19.6	---	--	--	-----	---	--	---	---	-	---	-----	---
Birmingham (OC)	239	1.3	421	2.3	---	--	--	-----	---	--	---	---	-	---	-----	---
Montgomery, Ala.	1,364	7.5	3,601	19.8	---	--	--	-----	---	--	---	---	-	---	-----	---
Montgomery (OC)	3,557	19.5	50	0.3	---	--	--	-----	---	--	---	---	-	---	-----	---
Greenville, Ala.	112	0.6	550	3.0	---	--	--	-----	---	--	---	---	-	---	-----	---
Evergreen, Ala.	12	0.1	117	0.6	---	--	--	-----	---	--	---	---	-	---	-----	---
Brewton, Ala.	100	0.5	142	0.7	---	--	--	-----	---	--	---	---	-	---	-----	---
Flomaton, Ala.	118	0.6	1,044	5.7	---	--	--	-----	---	--	---	---	-	---	-----	---
Flomaton (L&N byd)	81	0.4	777	4.3	---	--	--	-----	---	--	---	---	-	---	-----	---
Bay Minette, Ala.	2	0.1	69	0.4	---	--	--	-----	---	--	---	---	-	---	-----	---
Mobile, Ala.	1,548	8.5	3,117	17.1	---	--	--	-----	---	--	---	---	-	---	-----	---
Pascagoula, Miss.	359	2.0	375	2.1	---	--	--	-----	---	--	---	---	-	---	-----	---
Biloxi, Miss.	534	2.9	785	4.3	---	--	--	-----	---	--	---	---	-	---	-----	---
Edgewater Park, Miss.	-----	----	7	0.1	---	--	--	-----	---	--	---	---	-	---	-----	---
Gulfport, Miss.	435	2.4	641	3.5	---	--	--	-----	---	--	---	---	-	---	-----	---
Bay St. Louis, Miss.	321	1.8	166	0.9	---	--	--	-----	---	--	---	---	-	---	-----	---
Waveland, Miss.	24	0.1	-----	-----	---	--	--	-----	---	--	---	---	-	---	-----	---
Carrollton Avenue	-----	----	4,445	24.4	---	--	--	-----	---	--	---	---	-	---	-----	---
New Orleans, La.	-----	----	944	5.2	---	--	--	-----	---	--	---	---	-	---	-----	---
New Orleans (OC)	-----	----	-----	-----	---	--	--	-----	---	--	---	---	-	---	-----	---
Total	27,508	151.1	27,508	151.1	879	14	23	1,529	1,203	816	836	1,179	4	214	3,560	421

*D/A daily average

Louisville and Nashville Railroad Company, passengers handled on Train No. 7 for 6 months period, November 1, 1967 through April 30, 1968--Continued

From \ To	Montgomery	Montgomery (OC)	Greenville	Evergreen	Brewton	Flomaton	Flomaton (L&N byd)	Bay Minette	Mobile	Pascagoula	Biloxi	Edgewater Park	Gulfport	Bay St. Louis	Waveland	Carrollton Ave.	New Orleans	New Orleans (OC)
Cincinnati, Ohio	325	3	30	9	15	64	35	3	125	16	28	-	22	3	-	-	196	5
Cincinnati (OC)	514	10	81	17	10	117	100	8	286	11	77	-	46	6	-	-	144	29
Latonia, Ky	---	---	---	---	---	---	---	-	---	---	---	-	---	-	-	-	---	---
Louisville, Ky	228	1	3	--	5	33	14	-	64	13	22	-	12	3	-	-	97	20
Louisville (OC)	4	2	--	--	--	2	3	-	3	--	1	-	--	-	-	-	1	61
Elizabethtown, Ky	2	---	---	--	--	1	2	-	1	--	--	-	--	-	-	-	2	--
Bowling Green, Ky	15	---	---	--	--	2	2	-	5	--	1	-	2	-	-	-	9	2
Bowling Green (L&N byd)	---	---	---	--	--	---	---	-	--	--	--	-	--	-	-	-	--	--
Nashville, Tenn	116	2	5	1	1	39	16	2	41	2	9	-	7	-	-	-	24	15
Nashville (L&N byd)	1,379	28	38	21	22	237	209	3	601	69	107	1	97	9	-	-	67	10
Decatur, Ala	94	-	10	7	3	33	7	1	62	14	6	-	10	-	-	-	15	3
Decatur (OC)	2	---	---	--	--	---	1	-	3	--	1	-	--	-	-	-	--	--
Cullman, Ala	25	---	---	--	2	3	---	-	7	1	--	-	2	1	-	-	1	--
Birmingham, Ala	802	---	96	13	4	97	53	11	273	21	38	-	23	4	-	-	112	12
Birmingham (OC)	95	4	11	--	--	18	11	-	62	7	16	-	6	-	-	-	2	7
Montgomery, Ala	---	---	228	8	19	55	45	1	498	30	88	2	53	8	-	-	288	41
Montgomery (OC)	---	---	48	41	61	245	277	32	996	82	255	-	265	40	-	-	875	340
Greenville, Ala	---	---	---	--	--	4	2	-	48	5	3	-	5	-	-	-	36	9
Evergreen, Ala	---	---	---	--	--	1	---	-	--	--	1	-	--	-	-	-	10	--
Brewton, Ala	---	---	---	--	--	93	---	-	2	2	-	-	--	-	-	-	3	--
Flomaton, Ala	---	---	---	--	--	---	---	5	35	6	3	-	6	-	-	-	40	23
Flomaton (L&N byd)	---	---	---	--	--	---	---	3	5	-	4	-	3	-	-	-	27	39
Bay Minette, Ala	---	---	---	--	--	---	---	-	--	--	-	-	--	-	-	-	2	--
Mobile, Ala	---	---	---	--	--	---	---	-	--	96	80	4	47	33	-	-	1,145	143
Pascagoula, Miss	---	---	---	--	--	---	---	-	--	--	45	-	15	7	-	-	261	31
Biloxi, Miss	---	---	---	--	--	---	---	-	--	--	--	-	20	10	-	-	429	75
Edgewater Park, Miss	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	--	--
Gulfport, Miss	---	---	---	--	--	---	---	-	--	--	--	-	--	42	-	-	337	56
Bay St. Louis, Miss	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	317	4
Waveland, Miss	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	5	19
Carrollton Avenue	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	--	--
New Orleans, La	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	--	--
New Orleans (OC)	---	---	---	--	--	---	---	-	--	--	--	-	--	--	-	-	--	--
Total	3,601	50	550	117	142	1,044	777	69	3,117	375	785	7	641	166	-	-	4,445	944

	Year 1967 trains Nos. 6 and 7	First four months 1968 trains Nos. 6 and 7	Annual projection from actual results of April 1968 trains Nos. 6 and 7	Projected year 1968 Estimated revenues retained, expenses not saved from discontinuance of trains Nos. 6 and 7	Estimated revenues loss and expenses saved
Revenues:					
1. Passenger	$1,331,486	$246,925	$740,296	$399,037	$341,259
2. Dining	146,084	28,830	68,518	22,611	45,907
3. U. S. Mail	1,040,985	244,600	753,176	514,912	238,264
4. Express	309,519	52,608	----------	----------	----------
5. Baggage	2,525	1,784	5,817	2,909	2,908
6. Total	2,830,599	574,747	1,567,807	939,469	628,338
Expenses (out-of-pocket):					
7. Wages of train and enginecrews	721,702	229,576	652,530	----------	652,530
8. Locomotive repairs	292,629	91,681	271,699	----------	271,699
9. Locomotive fuel	258,266	80,914	239,785	----------	239,785
10. Locomotive water, lubricants, and other supplies	35,168	11,018	32,652	----------	32,652
11. Locomotive enginehouse expense	54,942	17,214	51,022	----------	51,022
12. Locomotive depreciation	46,008	15,336	46,660	----------	46,660
13. Car repairs	344,155	78,662	209,553	79,063	130,490
14. Car depreciation	23,966	5,268	15,042	8,476	6,566
15. Rent for passenger cars	171,884	26,769	45,565	----------	45,565
16. Train supplies and expenses	278,192	58,296	143,685	42,407	101,278
17. Personal injury and livestock damage	86,526	28,684	86,554	----------	86,554
18. Dining expenses	372,318	86,031	247,379	11,708	235,671
19. Pullman deficit	313,119	62,800	156,628	----------	156,628
20. Cincinnati joint terminal expenses	328,134	89,898	255,618	64,604	191,014
21. Louisville joint terminal expenses	19,960	-------	----------	----------	----------
22. Decatur joint terminal expenses	9,774	2,178	7,363	6,648	------- 715
23. Montgomery joint terminal expenses	30,704	8,704	31,034	17,011	14,023
24. New Orleans joint terminal expenses	92,559	25,115	68,286	8,746	59,540
25. Total	3,480,006	918,144	2,561,055	238,663	2,322,392
26. Net out-of-pocket (Loss) gain	(649,407)	(343,397)	(993,248)	----------	----------
27. Gain from feeder services	144,046	33,936	83,581	----------	----------
28. Net out-of-pocket (Loss) after feeder gain	(505,361)	(309,461)	(909,667)	----------	----------

Expenses—annual projection	2,322,392
Revenues—annual projection	628,338
Savings to L&N Railroad Company	1,694,054
Less projected feeder revenue gain	83,581
Net annual savings to L&N	1,610,473

Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 3rd day of September, 1968.

Finance Docket No. 25047

Louisville and Nashville Railroad Company Discontinuance of Trains Nos. 6 and 7 Between New Orleans, La., and Cincinnati, Ohio

Investigation of the matters and things involved in this proceeding having been made pursuant to the order of said division, dated April 24, 1968, a hearing having been held and the said division on the date hereof having made and filed a report containing its findings of fact and conclusions thereon which report is hereby referred to and made a part hereof:

It is ordered, That this investigation be, and it is hereby, discontinued effective 35 days from the date of service of this order.

By the Commission, division 3.

H. Neil Garson,
Secretary.

(seal)

APPENDIX C

Service Date
November 4, 1968

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 31st day of October 1968.

Finance Docket No. 25047

LOUISVILLE AND NASHVILLE RAILROAD COMPANY DISCONTINUANCE OF TRAINS NOS. 6 AND 7 BETWEEN NEW ORLEANS, LA., AND CINCINNATI, OHIO

Upon consideration of the record in the above-entitled proceedings, the petition of Metropolitan Government of Nashville and Davidson County, Tenn., Tennessee Public Service Commission, Alabama Public Service Commission, State of Louisiana and the Cities of Chicago, Ill. and Birmingham and Montgomery, Ala., filed October 7, 1968, seeking reconsideration of the order of Division 3, served September 6, 1968; and the reply of the Louisville and Nashville Railroad Company filed October 9, 1968; and

It appearing, That the petition sets forth no material facts or arguments in addition to those previously considered in the proceeding; that there has been presented no error of fact or law with respect to matters complained of by petitioners; and that no showing has been made warranting reconsideration of said order;

It is ordered, That the petition for reconsideration be, and it is hereby denied.

By the Commission, Division 3, acting as an Appellate Division.

H. NEIL GARSON,
Secretary.

(SEAL)